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November 30, 2005

Electronically filed in MB Docket No. 05-317, via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Washington, DC 20554

Re: Television Station Section 339(a)(2)(D)(vii) Waiver Request

Dear Ms. Dortch:

Pursuant to the Commission's public notice, DA-05-2979, released November 17, 2005, and pursuant to Section 339(a)(2)(D)(viii) of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), this letter is to request, on behalf of Southern TV Corporation, a waiver that would prohibit satellite subscribers from receiving or conducting a digital signal strength test for television station WGSA-DT, Facility ID 69446, Baxley, Georgia.

WGSA-DT appears to be subject to the implementation date of April 30, 2006. It is a network-affiliated station, affiliated with the UPN Network. It has received a tentative channel designation on its allotted digital channel 35. It operates in the Savannah, Georgia, Designated Market Area ("DMA"). While Savannah is not listed in the top 100 markets in Section 76.51 of the Commission's Rules, it is listed as currently the 97th market on the Nielsen website, <http://www.nielsenmedia.com/DMA.html>. The SHVERA does not indicate which source should be used for determining market rank. If Section 76.51 is used, then WGSA-DT is not subject to the April 30, 2006, implementation date; but if current Nielsen information is used, WGSA-DT is subject to the April 30, 2006, date.

WGSA-DT qualifies for a waiver under two of the several statutory tests listed in the Commission's public notice: "(II) clear zoning or environmental legal impediments" and "(III) *force majeure*."

I N F O R M A T I O N | C O M M U N I C A T I O N S | T E C H N O L O G Y

WGSA-DT has been unable to construct its full authorized DTV facilities because construction of the authorized tower was blocked for several years by environmental legal impediments, forcing the station to commence DTV operation with temporary facilities with much smaller signal coverage under BDSTA-20050715ABN, granted August 16, 2005. The environmental problems were reported in BEPCT-20030401CJC and BEPCT-20040227ABW. Although the licensee believes that the environmental issues, which were handled by the tower owner (which is not the licensee), were finally resolved, the tower owner has still not built the tower.

In addition, three elements of *force majeure* beyond the licensee's control exist. First, a grant of the current DTV construction permit, BMPCDT-20010608AAE, was delayed until October 19, 2004, because of an issue involving short-spacing to applications for construction permits for new stations that were dismissed but were so old that records about them could not be located at the Commission's offices. The licensee had no control over this issue and had no choice but to wait for the Commission's Staff to reach a resolution of the problem. Second, as noted above, the tower owner has still not built the tower, so the licensee cannot possibly install its facilities. Third, recognizing the possibility that the authorized tower will never be built, the licensee has searched for another tower. The licensee's president has advised me that a nearby tower has been located. However, the owner recently passed away, and the heirs have not been willing to commit to a specific height on the tower, thus preventing the licensee from filing an application to move there. While this problem too should be resolved, hopefully soon, the death was an unforeseen circumstance that could not have been prevented by the licensee and is irremediable.

In light of the above showings of environmental problems and *force majeure*, it is respectfully submitted that WGSA-DT qualifies under the statutory test for a waiver that would prohibit satellite subscribers from receiving or conducting a digital signal strength test for television station WGSA-DT in connection with any proposal to import the distant digital signal of any UPN affiliated station.

Respectfully submitted,



Peter Tannenwald

Counsel for Southern TV Corporation

cc: (via e-mail)
Ms. Nazifa Sawez
Mr. Dan L. Johnson